

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL REVISION APPLICATION NO. 180 OF 2005

1. Vishnu s/o Limba Chavan,
Age 35 years, Occ. Labour
2. Babibai @ Bibabai w/o Vishnu Chavan
Age 28 years, Occ. Labour

Both R/o. Harising Nain Tanda
Raniuachegaon, Tq. Ghansawangi,
District Jalna

...Applicants
(Ori. Accused)

versus

The State of Maharashtra
Copy to be served on APP
High Court at Aurangabad

...Respondent

.....
Mr. V. D. Salunke, advocate for the applicant
Mr. B.V. Virdhe, A.P.P. for the respondent
.....

CORAM : V. K. JADHAV, J.

**Date of Reserving
the Judgment : 29.01.2019**

**Date of pronouncing
the Judgment : 07.03.2019**

JUDGMENT :-

1. By way of this criminal revision application, the applicants-accused challenge the judgment and order of conviction passed by the 2nd Ad-hoc Assistant Sessions Judge, Jalna dated 3.9.2001 in Sessions Case No. 84 of 1994 thereby convicting the applicants for

the offences punishable under Section 306, 498-A r.w. 34 of I.P.C. For the offence punishable under Section 306 r.w. 34 of I.P.C. the applicants are sentenced to suffer R.I. for three years and to pay a fine of Rs.500/- each i/d to suffer R.I. for two months. However, there is no separate sentence of the offence under Section 498-A r.w. 34 of I.P.C. The conviction and sentence awarded by the learned Assistant Sessions Judge, Jalna in Sessions Case No. 84 of 1994 is modified by the learned Sessions Judge, Jalna in Criminal appeal No. 16 of 2001 by judgment and order dated 3.6.2005 and instead of sentencing to suffer R.I. for three years the applicants are sentenced to suffer R.I. for two years each. The order of fine is maintained.

2. Brief facts giving rise to the present criminal revision application are as follows:-

a) The complainant P.W.1 Pralhad Rathod was having three daughters and one son. Deceased Yamuna was his eldest daughter given in marriage to accused No.1 Vishnu prior to 14 to 15 years before the incident dated 13.10.1993. Accused No.1 is resident of Raniunchegaon, Taluka Ghansawangi, District Jalna, which is about 20 to 30 kilometers away from Nirkheda i.e. place of complainant P.W.1 Pralhad. Accused No.2 Suratbai is mother of accused No.1 Vishnu and cousin of P.W.1 Pralhad Rathod. The accused No.3 i.e.

the applicant No.2 herein is second wife of accused No.1 Vishnu. After the marriage, deceased Yamuna started cohabiting with her husband at Raniunchegaon and she was treated well by her in laws for about two years. Thereafter her husband and mother-in-law i.e. accused Nos. 1 and 2 started ill-treating her and assaulting her. Her husband used to make taunts that deceased Yanuma was having dark complexion and used to assault her. During her visit to her maternal house, deceased Yamuna used to narrate such incidents to her father i.e. P.W.1 Pralhad. Deceased Yamuna gave birth to two daughters by name Chandrakala and Subhadra. The accused Nos. 1 and 2 started ill-treating deceased Yamuna with more severity as she could not beget a male child. They used to make taunting about her inability to deliver a male child and used to beat her and used to ask her to go to her maternal house and not to stay with them. The accused No.1 Vishnu performed second marriage with accused No.3 i.e. applicant No.2 herein and she also started cohabiting with accused No.1 Vishnu simultaneously with Yamuna.

b) Deceased Yamuna fed up with the ill-treatment and beatings at the hands of accused persons, she returned to her maternal house at Nirkheda. She narrated the incident of assault on her to her parents and thereafter she filed a petition for maintenance in the court of J.M.F.C. at Jalna. The Court awarded to her monthly maintenance

allowance of Rs.600/-. Thereafter, the father-in-law of deceased Yamuna had taken deceased Yamuna to her matrimonial house and also transferred his two acres land in the name of deceased Yamuna. The dispute between accused No.1 and deceased Yamuna came to be compromised and P.W.1 Pralhad sent Yamuna to Raniunchegaon for cohabitation.

c) On 12.10.1993 at 12.00 midnight P.W.1 Pralhad had received a shocking message that his daughter Yamuna had expired. On the next day he visited Raniunchegaon and saw the dead body of Yamuna at the house of accused persons. There was blood and froth oozing from her nostrils and the mouth was smelling of poison. On the same day at about 9.15 p.m. P.W.1 Pralhad lodged F.I.R. at Ambad police station specifically disclosing the names of all the three accused persons alleging that his daughter Yamuna committed suicide due to the ill-treatment caused by all the accused persons.

d) On the basis of his complaint, crime No. I-183 of 1993 came to be registered with Ambad police station for the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C. The investigating officer has prepared inquest panchanama Exh.56 and also drawn spot panchanama. On the same day between 2.00 p.m. to 3.30 p.m. post mortem was carried out on the dead body of Yamuna. As per post

mortem report Exh.58 there were no external injuries on the body of deceased Yamuna.

e) After completion of investigation, the investigating officer submitted charge sheet on 16.4.1994 against all three accused persons for the offences punishable under Sections 498-A, 306 r.w. 34 of I.P.C. in the Court of learned J.M.F.C. Ambad. The case was committed to the Court of Sessions. The learned Judge read over and explained the charge to the accused. The accused pleaded not guilty to the same and claimed to be tried. In order to substantiate the charge levelled against the accused, the prosecution has examined in all four witnesses. After completion of the evidence of prosecution witnesses, the statement of accused persons under Section 313 of Cr.P.C. came to be recorded. The defence of the accused was that they did not ill-treat deceased Yamuna and she committed suicide due to poverty of accused No.1. The accused No.1 has also contended that he performed the second marriage with accused No.3 Babibai with the consent of deceased Yamuna as Yamuna was not having a male child.

f) After hearing both sides, the learned 2nd Ad-hoc Assistant Sessions Judge, Jalna convicted the applicants for the offences punishable under Section 306, 498-A r.w. 34 of I.P.C. for the offence

punishable under Section 306 r.w. 34 of I.P.C. the applicants are sentenced to suffer R.I. for three years and to pay a fine of Rs.500/- each i/d to suffer R.I. for two months. However, there is no separate sentence of the offence under Section 498-A r.w. 34 of I.P.C. However, the learned Judge has acquitted the accused No.2 of the offences punishable under Sections 306 r.w. 34 and 498-A r.w. 34 of I.P.C. The appeal preferred by the applicants-accused bearing Criminal Appeal No. 16 of 2001 came to be partly allowed by modifying the sentence and instead of three years the applicants are sentenced to suffer R.I. for two years each. The order of fine is maintained by the Sessions Judge, Jalna by the judgment and order dated 3.6.2005. Hence, this criminal revision application.

3. Learned counsel for the applicants-accused submits that there is no direct evidence in this case. The prosecution case entirely rests upon the circumstantial evidence. The courts below have overlooked the fact that all prosecution witnesses are interested witnesses and thus conveniently brushed aside the inconsistencies in evidence of witnesses and these are filled in by assumption and presumption. No cruelty of whatsoever in nature is proved by the prosecution. The evidence of the prosecution witnesses is unreliable and untrustworthy and not believable. Learned counsel submits that the witnesses have narrated only two incidents of taunting and assaults

over the period of 15 years of married life and finding is arrived at that deceased was subjected to cruelty as would drive her to commit suicide which does not seem to be conduct of normal human being. There are improvements in the depositions of the witnesses as compared to statement made under section 161 of Cr.P.C., as would be evident from depositions of P.W.1 to 3 and P.W.4, who is independent witness. The courts below have not considered the admission of P.W.1 that deceased was treated nicely after birth of second daughter and that she might have given consent to second marriage of accused No.1. The learned counsel for the applicant submits that no incriminating articles of whatsoever in nature were found against the accused persons. The prosecution has also failed to prove the *mens-rea* on the part of accused persons without which no offence of abetment said to have been established. The learned counsel for the applicants, thus submits that the criminal revision application deserves to be allowed.

4. Learned A.P.P. for the respondent-State has supported the judgment and order of conviction passed by the courts below. The learned A.P.P. submits that the evidence of P.W. 1 and 2, who are parents of deceased is consistent, reliable and trustworthy. They have deposed about ill-treatment being extended to deceased Yamuna by the present applicants for various reasons. The learned

A.P.P. submits that just before 12 days of death of Yamuna, she had been to parents house by leaving her two minor daughters at her matrimonial home. The same speaks about the severity of ill-treatment being extended to deceased Yamuna. She was subjected to severe beatings by the husband i.e. applicant No.1 herein and even applicant No.2 has assaulted her by showing her sickle. Both the courts below have thus rightly convicted the applicants for the offences punishable under Sections 306, 498-A r.w. 34 of I.P.C.. There is enough evidence to conclude that the present applicants have abetted the commission of suicide by deceased Yamuna. The prosecution has succeeded in proving the cruelty as defined under Section 498-A of I.P.C. There is no substance in the criminal revision application and the same is liable to be dismissed.

5. I have heard learned counsel for the applicants and the learned APP for the respondent State. I have perused the memo of revision application, annexures thereto and the record and proceedings.

6. P.W.1 Pralhad, father of deceased Yamuna and P.W.2 Jhamabai, mother of deceased Yamuna, are the important witnesses. According to P.W.1 Pralhad, deceased Yamuna was treated well by her husband for 2 to 4 years and deceased Yamuna had begotten

two daughters out of her marital wedlock. P.W.1 Pralhad has deposed that four years after her marriage, deceased Yamuna came to their house. She told them that her husband (applicant No.1 herein) was ill-treating and assaulting her for the reason that she had dark complexion. The applicant No.1 husband had no interest in her. He has further deposed that he allowed his daughter Yamuna to reside with him for about 12 months. Thereafter, deceased Yamuna had filed an application for grant of maintenance against her husband in the Court at Jalna and an amount of Rs.600/- per month was granted to Yamuna and her two daughters. P.W.1 Pralhad has further deposed that 5 to 6 months thereafter, applicant No.1 Vishnu (husband of deceased Yamuna) came to him and initiated the compromise talks. He had also shown willingness to take Yamuna to his house for further co-habitation. P.W.1 Pralhad showed his willingness to settle the dispute amicably and sent deceased Yamuna for co-habitation on the condition that the agricultural land admeasuring two acres should be transferred in the name of deceased Yamuna and that has been done accordingly. He has further deposed that about one month and three weeks thereafter deceased Yamuna returned to him and told him that she was subjected to beating by both the applicants (original accused Nos. 1 and 3). However, the brother of applicant No.1 Laxman came to parents house and informed Yamuna that her minor two daughters

are weeping. Thus, deceased Yamuna was sent to the matrimonial home. Some 8 to 10 days thereafter, deceased Yamuna had consumed poison and died in her matrimonial home.

7. P.W.1 Pralhad had admitted in para 6 of his cross examination that deceased Yamuna died about 14/15 years after her marriage. He had also admitted that for about 4 years after the marriage, deceased Yamuna did not come to him and he did not go to her. He has also accepted the possibility that his daughter Yamuna might have asked applicant No.1 Vishnu to perform second marriage for having son as Yamuna could not begot a son. He had further admitted that after Yamuna resumed for cohabitation in terms of compromise, she had begotten second daughter. He also admitted in same para 6 of the cross examination that applicant accused No.1 Vishnu was treating deceased Yamuna well after birth of second daughter.

8. There was no demand whatsoever in any manner and it is not the case of the prosecution that deceased Yamuna was subjected to any ill-treatment on account of non fulfillment of any demand. Deceased Yamuna was treated well for near about 2/4 years as deposed by P.W.1 Pralhad. It is difficult to accept that for four years the applicant accused No.1 Vishnu never complained about her dark complexion. P.W. 1 Pralhad has also accepted that his daughter

Yamuna might have asked accused-applicant No.1 Vishnu to perform second marriage for having a son, as she could not begot a son. It thus appears that deceased Yamuna had given consent for the second marriage and she was not subjected to any physical or mental harassment on account of performance of second marriage. After four years of marriage, deceased Yamuna had complained her parents against applicant accused No.1 Vishnu and told them that her husband used to tell about her dark complexion and no interest in her. Deceased Yamuna had stayed with her parents at their house for about 12 months. However, after resuming cohabitation in terms of the compromise, she went to her matrimonial home for further cohabitation and thereafter gave birth to the second daughter. P.W.1 Pralhad had also admitted that there was no ill-treatment extended to her of any kind after birth of the second daughter. Deceased Yamuna died after 14/15 years of her marriage. She was treated well for 2/4 years. She had stayed in her parents house for about 1½ years. It thus appears that she had cohabited with the applicant original accused No.1 Vishnu for about 10 years after giving birth to the second daughter. The prosecution has not given details of ill-treatment being extended to deceased for such a long period of 10 years on account of her dark complexion etc.

9. P.W.2 Jhamabai, who happened to be mother of deceased

Yamuna, has deposed that deceased Yamuna was treated well for 5 to 6 years after the marriage and thereafter, applicant No.1 accused Vishnu started saying that deceased Yamuna was having dark complexion. She has not given details as to in what manner deceased Yamuna was subjected to ill-treatment. According to her, deceased Yamuna stayed with her for about two years. On the other hand, P.W.1 Pralhad has deposed that deceased Yamuna had stayed in their house for one year. It appears that P.W.1 Pralhad and P.W.2 Jhamabai have deposed about one incident which has taken place some 1 ½ months prior to death. Deceased Yamuna had been to their house alone by leaving her minor daughters at her matrimonial home. However, there is no satisfactory evidence as to what led deceased Yamuna to leave her matrimonial home even by keeping her two minor daughters in the house. P.W.2 Jhamabai has not deposed about any incident as to what led the applicant to assault deceased Yamuna.

10. P.W.3 Bakilal brother of P.W.1 Pralhad has brought altogether different story. He had deposed that deceased Yamuna was subjected to ill-treatment for the reason that she had begotten only female child. P.W.1 Pralhad had admitted in his cross examination that accused applicant No.1 Vishnu had been to his house to resume for cohabitation even after the maintenance was granted to his wife

by the Court. P.W.1 Pralhad has also admitted in his cross examination that after birth of second daughter, deceased Yamuna was not subjected to any ill-treatment.

11. It thus appears that P.W.1 Pralhad, P.W.2 Jhamabai and P.W.3 Bakilal have contradicted each other on material aspects. The prosecution story is unbelievable. Furthermore, the presumption under Section 113-A of Evidence Act is not attracted for two reasons. Firstly, deceased Yamuna died after 14/15 years of her marriage and secondly, the prosecution has miserably failed to prove the guilt as defined in Section 498-A of I.P.C. So far as the applicant No.2 is concerned, she has not played any role. It is not clear from the judgment and order of conviction of the courts below as to why applicant No.2, who happened to be the co-wife, came to be convicted under Section 306 r.w. 498-A of I.P.C.

12. In the case of ***Ramu Shankar Wagh vs. State of Maharashtra***, reported in ***2014 All M.R. (Cri) 1792***, this Court has held that the aspect of cruelty having not been proved, the penal provisions of Section 498-A and 306 are not attracted.

13. In the instant case, I find no satisfactory evidence about the ill-treatment. Sub-section (b) of Section 498-A, which is relevant for the

present discussion, is reproduced herein below:

“498-A(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security is on account of failure by her or any person related to her to meet such demand.”

14. In a case of ***Ravindra Pyarelal Bidlan and others vs. State of Maharashtra***, reported in **1993 Cri.L.J. 3019**, this Court at its principal seat at Bombay has in para 26 made the following observations:

“26. Sub-clause (b) of the explanation to S. 498A provides that cruelty means harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. Sub-clause (b) does not make each and every harassment cruelty. The harassment has to be with a definite object, namely to coerce the woman or any person related to her to meet an unlawful demand. Hence, mere harassment by itself is not cruelty. Mere demand of property etc. by itself is also not cruelty. It is only where harassment is shown to have been committed for the purpose of coercing a woman to meet the demands that is cruelty and this is made punishable under the section. In other words, it is not every harassment or every type of cruelty that would attract Section 498-A. It must be established that the berating or harassment was with a view to force the wife to commit suicide or to fulfill illegal demands of the husband or

the in-laws”

15. In the case of ***Balaji Vithal Kinhale vs. The State of Maharashtra, reported in 2018 ALL MR (Cri) 4038***, this Court in para 18 of the judgment, has made the following observations:-

“18. As regards the offence punishable under Section 306 of IPC, a perusal of the said provision shows that there ought to be material on record to prove that the appellant abetted commission of suicide by deceased Narmada. As the death of Narmada occurred within seven years of marriage, the presumption under Section 113-A of the Act of 1872, would come into operation in the present case. But, such presumption coming into operation would be subject to the condition that the prosecution was able to prove that the appellant had subjected Narmada to cruelty. Such cruelty, as per the explanation given in the said provision has the same meaning as given in Section 498-A of the IPC. Thus, merely because death of Narmada took place within seven years of marriage, the presumption under Section 113-A of the Act of 1872 would not operate against the appellant. As regards the proof of cruelty under Section 498-A of the IPC, cruelty has been specifically defined in the explanation to the said provision which is relevant. Section 498-A of the IPC reads as follows :

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.-Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.-For the purposes of this section, "cruelty",

means-

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

16. In view of the observations made by this Court in the above cited cases, the judgment and orders of conviction impugned in this criminal revision application are not sustainable in the eyes of law. In the result, the criminal revision application deserves to be allowed. Hence, I proceed to pass the following order.

ORDER

- I. The criminal revision application is hereby allowed.
- II. The judgment and order of conviction dated 3.9.2001 passed by the 2nd Ad-hoc Assistant Sessions Judge, Jalna in Sessions Case No. 84 of 1994 under Sections 306, 498-A r/w 34 of IPC, sentencing thereby the applicants/accused to suffer R.I. for three years and to pay fine of Rs.500/- each, in default to suffer R.I. for two months and the judgment and order dated 3.6.2005 in Criminal Appeal No. 16 of 2001 passed by the Sessions Judge, Jalna thereby modifying the sentence to suffer

R.I. for two years instead of three years, are hereby quashed and set aside.

- III. The applicant/accused no.1 Vishnu Limba Chavan and the applicant/accused no.3 Babibai @ Bibabai w/o Vishnu Chavan are hereby acquitted of the offences under Sections 306, 498-A r/w 34 of IPC in Sessions Case No. 84 of 1994.
- IV. The fine amount, if deposited by the applicants/accused, shall be refunded to them.
- V. The criminal revision application is accordingly disposed of. Rule made absolute.

(V. K. JADHAV, J.)

rlj/